ROBERT G. LYNN

IBLA 83-318 Decided April 29, 1983

Appeal from a decision of California State Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offer CA 10974.

Affirmed.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Consent of Agency

> The Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. §§ 351-359 (1976), requires that the consent of the administrative agency having jurisdiction over the acquired land described in the lease offer be obtained prior to issuance of a lease for such lands. Absent consent, the Department of the Interior is without authority to issue a lease.

APPEARANCES: Robert G. Lynn, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Robert G. Lynn appeals from the November 22, 1982, decision of the California State Office, Bureau of Land Management (BLM), which rejected acquired lands noncompetitive oil and gas lease offer CA 10974. The offer was filed August 28, 1981, for 1,103.82 acres of acquired land situated within the El Centro Naval Auxiliary Air Station, near El Centro, California, which is under the jurisdiction of the Department of the Navy. The decision states:

The regulations in 43 CFR 3109.3-1 require the consent of the jurisdictional agency before a lease may be issued. The Navy does not consent to these lands being leased for oil and gas for the following reasons.

The Department of the Navy reports that family housing quarters as well as various administrative facilities and structures required for providing services and material in support of aviation and other designated activities are located in a portion of the area under application. Mineral exploration and/or extraction in these areas would seriously disrupt the operational flow. The remaining areas involve the primary duty runway and emergency landing strip. Any disruption of either landing facility would virtually eliminate or significantly reduce air operations; any drilling activities in the immediate vicinity of the runways would violate designated clear zones. In addition, subsidence problems exist in this area as evidenced by recent runway settlement.

In view of the foregoing, the Department of the Navy does not consent to leasing the lands applied for.

> Pursuant to the provisions in 43 CFR 3109.3-1, leases may be issued only with the consent of the agency having jurisdiction over the lands. As a result, offer CA 10974 is, accordingly, rejected in its entirety.

In his statement of reasons, appellant states that 43 CFR 3109.3-1 is based on legislation which presumes that the surface agency will respond in good faith and will not unreasonably withhold consent to the issuance of leases. The purpose of the legislative restriction was to prevent interference with the primary surface use of the lands acquired by said agency. If an agency such as the Navy withholds consent on all of its lands in an entire state one must assume that they are not acting in good faith. In other words, there must be at least one acre somewhere in their domain that would not be adversely affected by at least a "subsurface only" lease.

Appellant suggests that the Secretary does not require the consent of the surface agency to issue a lease if it can be demonstrated that by so doing the activities permitted thereunder will in no way interfere with the use of said surface. The regulation above cited which provides the surface agency with carte blanche veto of leasing is too narrowly drawn and does not reflect the intent of the legislation itself, which is merely designed to protect the surface use.

Finally, appellant contends that the Acquired Lands Act of 1947 was amended in the recent Coal Act to permit leasing of military lands. The obvious public purpose served is to increase the domestic areas that can be explored to produce more domestic oil and gas. BLM erred in not changing the regulations to permit subsurface only leasing at the sole discretion of the Secretary. BLM does not have the authority to restrict by regulation the discretionary authority of the Secretary when said regulation is not clearly supported by any legislation.

[1] The pertinent section of the statute, at 30 U.S.C. § 352 (Supp. V 1982), provides that no mineral deposit by the section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing

such deposit. Thus, there is no way that BLM can issue a lease on lands acquired by the Department of the Navy except with the consent of the Navy. The protestations and suggestions of appellant have no merit.

The effect of the statute is to preclude mineral leasing on acquired lands without the consent of the administrative agency having jurisdiction over the acquired lands. Joseph C. Manga, 71 IBLA 187 (1983); Amoco Production Co., 69 IBLA 279 (1982); Altex Oil Co., 66 IBLA 307 (1982); Rachalk Production, Inc., 64 IBLA 4 (1982); Dennis Harris, 55 IBLA 280 (1981). Thus, since the Department of the Navy has withheld its consent, this Department cannot issue oil and gas leases for the acquired land within the El Centro Air Facility, and the lease offer was properly rejected. As we said in Joseph C. Manga, supra, the remedial avenue in cases such as this is for appellant to try to persuade the administering agency to modify the scope of its denial to consent to leasing, or, failing that, seek judicial review of that denial.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge.